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## MUNICIPAL COURT OF AKRON—FELONY CASES—DISPOSITION OF FEES UPON CONVICTION.

## SYLLABUS:

*In felony cases instituted in the municipal court of Akron, where the defendant is convicted in the court of common pleas, such fees as accrue in such court should be inserted in the judgment of conviction. Upon payment of the costs of conviction by the state, under the provisions of Section 13727, General Code, the clerk of the court of common pleas, by the terms of Section 3016, General Code, should pay such fees and costs as may have accrued in the municipal court of Akron to the clerk thereof, whose duty it then is to pay the same into the treasury of the city of Akron, as provided by Section 1579-536, General Code.*

COLUMBUS, OHIO, January 30, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:— This will acknowledge your letter dated January 21, 1928, which reads:

“You are respectfully requested to furnish this department your written opinion upon the following:

In felony cases instituted in the municipal court in the city of Akron, what disposition should be made of the fees taxed for the clerk of the municipal court and the bailiff in cases where a conviction is had and defendant sentenced to the penitentiary, the state paying the costs to the clerk of courts of Summit county.

Question: Should these fees be paid into the municipal treasury or into the county treasury?”

Section 1579-508, General Code, defines the criminal jurisdiction of the municipal court of Akron and, in so far as pertinent, provides:

“The court shall have jurisdiction \* \* \* and in felonies committed within said county the court shall have power to hear the case and to discharge, recognize or commit, and if upon such hearing the court is of the opinion that the offense committed is only a misdemeanor, a plea of guilty may be received and judgment and sentence pronounced.”

Section 1579-517, General Code, reads as follows:

“In all criminal cases and proceedings the practice and procedure and mode of bringing and conducting prosecutions for offenses and the power of the court in relation thereto shall be the same as those which are now or may hereafter be conferred upon police courts.”

Section 1579-548, General Code, provides in part as follows:

“The municipal court shall be the successor of the police court of the city of Akron and of the justices of the peace of Akron township, Summit county. \* \* \*”

Section 4583, General Code, relates to the procedure and practice in police courts in felony cases and in so far as pertinent provides:

"In felonies committed in the county, the court (police court) shall have the powers of a justice of the peace to hear the case, and discharge, recognize or commit. \* \* \*

From the provisions of these several statutes you will note that the jurisdiction of the municipal court of Akron, in cases in which a felony is charged is that of an examining court with authority to hear the case and to discharge, recognize or commit the accused.

Section 3005, General Code, provides in part as follows:

"In each municipality where a municipal court is provided by law, the following fees, and no more, shall be taxed as part of the costs and be included in the judgment in all criminal proceedings.

FOR THE CLERK: The same fees provided for justices of the peace under Section 1746, General Code.

FOR THE BAILIFF: The same fees provided for constables under Section 3347, General Code."

Section 3016, General Code, provides in part that:

"In felonies, where the defendant is convicted, the fees of the various magistrates and their officers, the witness fees and interpreter's fees shall be inserted in the judgment of conviction and when collected the same shall be disbursed by the clerk of courts to the persons entitled thereto \* \* \* except that in both felonies and minor state cases, said clerk shall pay the witness and interpreter's fees into the county treasury, monthly."

As stated in 33 Corpus Juris, at page 927:

"It is difficult to give to the term 'magistrate' derived from the Latin 'magistratus,' any definite meaning. It may be used as a generic term with a general sense, or in a narrow or strict sense. In its narrow sense a magistrate is regarded, perhaps commonly so, as an inferior judicial officer, such as a justice of the peace; a judicial officer having summary jurisdiction in matters of a criminal or quasi criminal nature; an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. In its general sense the term imports a public officer, exercising a public authority; a public civil officer; possessing such power, legislative, executive or judicial, as the government appointing him may ordain; a person clothed with power as a public civil officer. Accordingly, in its broader sense, the term may be employed as including \* \* \* a city judge and ex officio justice of the peace, \* \* \* a judge of a municipal court, a justice of the peace, a notary public, a police judge, a police magistrate, a trial justice. \* \* \*"

As provided by Section 3016, supra, in felonies, where the defendant is convicted, the fees of the various magistrates and their officers shall be inserted in the judgment of conviction and when collected the same shall be disbursed by the clerk of courts to the persons entitled thereto. As stated in Corpus Juris, supra, it is

difficult to give to the term "magistrate" any definite meaning. The jurisdiction of the municipal court of Akron, in felony cases, is the same as that conferred by law upon police courts. In other words, the municipal court of Akron acts solely as an examining magistrate in felony cases and as provided by Section 3016, supra, the fees taxed in such court in felony cases, when the defendant is convicted, shall be inserted in the judgment of conviction.

As provided by Section 13722, General Code :

"Upon sentence of a person for a felony, the clerk (of the court of common pleas) shall make and certify, under his hand and the seal of the court, a complete itemized bill of the costs made in such prosecution. \* \* \*"

Section 13727, General Code, in so far as pertinent, provides :

"Upon the return of the writ against the convict, if an amount of money has not been made sufficient for the payment of the costs of conviction, and no additional property is found whereon to levy, the clerk shall so certify to the auditor of state, under his seal, with a statement of the total amount of costs, the amount made and the amount remaining unpaid. Such amount so unpaid as the auditor finds to be correct, shall be paid by the state, to the order of such clerk."

Upon receipt of such money the clerk of the court of common pleas, by the terms of Section 3016, supra, shall disburse the same to the persons entitled thereto.

As provided by Section 1579-536, General Code,

"He (the clerk of the municipal court of Akron) \* \* \* shall receive and collect all costs, fees, fines and penalties and shall pay the same monthly into the treasury of the city of Akron and take a receipt therefor, except as otherwise provided by law. \* \* \*"

Under the provisions of Section 3016, supra, it is my opinion that the clerk of the court of common pleas should pay such amount of money as represents the amount of fees and costs taxed in the municipal court of Akron to the clerk thereof, in his official capacity, being the person entitled thereto. By the terms of Section 1579-536, supra, it is the duty of the clerk of the municipal court of Akron to pay such fees and costs into the treasury of the city of Akron.

Answering your question specifically, it is my opinion that, in felony cases instituted in the municipal court of Akron, where the defendant is convicted in the court of common pleas, such fees as accrue in such court should be inserted in the judgment of conviction. Upon payment of the costs of conviction by the state, under the provisions of Section 13727, General Code, the clerk of the court of common pleas, by the terms of Section 3016, General Code, should pay such fees and costs as may have accrued in the municipal court of Akron to the clerk thereof, whose duty it is to pay the same into the treasury of the city of Akron, as provided by Section 1579-536, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General,*